

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DONALD LEON GLADDEN, JR.,

Petitioner,

-v-

9:18-CV-1187

WARDEN OF FCI RAYBROOK,

Respondent.

APPEARANCES:

OF COUNSEL:

DONALD LEON GLADDEN, JR.
Petitioner, Pro Se
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THOMAS SPINA, JR., ESQ.
Ass't United States Attorney

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On May 3, 2018, *pro se* petitioner Donald Gladden, Jr. (“petitioner”) filed this action in the District of New Jersey seeking federal habeas relief pursuant to 28 U.S.C. § 2241. Dkt. No. 1. After the matter was transferred to this judicial district, Dkt. No. 6, respondent was directed to file and serve an answer to the petition and to provide the Court with relevant state court records, Dkt. No. 7. Thereafter, respondent moved to dismiss the petition for failure to prosecute. Dkt. No. 13.

On September 3, 2021, U.S. Magistrate Judge Christian F. Hummel advised by Report & Recommendation (“R&R”) that the petition be converted to a motion to amend and then transferred to the District of Maryland. Dkt. No. 13. Judge Hummel further advised that respondent’s motion to dismiss be denied as moot. *Id.* As Judge Hummel explained, petitioner filed this action *after* filing a § 2255 petition in the District of Maryland. *Id.* Under those circumstances, the Second Circuit has made clear that a later-filed petition, such as a § 2241 petition, should be construed as a motion to amend the pending § 2255 petition. *Id.*

Petitioner has not filed objections, and the time period in which to do so has expired. *See* Dkt. No. 16. Upon review for clear error, the R&R will be accepted and adopted in all respects. *See* FED. R. CIV. P. 72(b).

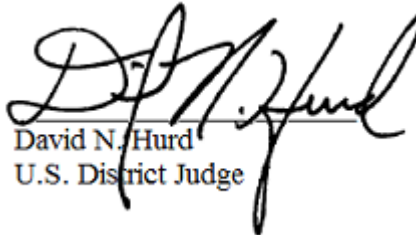
Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. The petition is construed as a motion to amend;
3. The Clerk of the Court is directed to TRANSFER the petition to the U.S. District Court for the District of Maryland;
4. Respondent's motion to dismiss is DENIED AS MOOT; and
5. The seven-day waiting period is WAIVED.

IT IS SO ORDERED.

Dated: February 14, 2022
Utica, New York.


David N. Hurd
U.S. District Judge